

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Chairman;
Michael Kubayanda, Vice Chairman;
Mark Acton;
Ann C. Fisher; and
Ashley E. Poling

Complaint of Randall Ehrlich

Docket No. C2020-1

ORDER DENYING MOTION TO EXPAND ISSUES

(Issued May 22, 2020)

I. INTRODUCTION AND PROCEDURAL HISTORY

On December 23, 2019, Randall Ehrlich (Complainant) filed a complaint pursuant to 39 U.S.C. §§ 3662(a) and 403(c) concerning an ongoing suspension of mail service to his home.¹ The Complainant alleges that the Postal Service unreasonably discriminated against him in its suspension of mail delivery to his front porch mailbox. Complaint at 13. He requests that the Commission require delivery to be restored to his front porch mailbox and that “all discriminatory acts and omissions” against Complainant “cease immediately.” *Id.* at 14.

¹ Complaint of Randall Ehrlich, December 23, 2019 (Complaint).

On January 13, 2020, the Postal Service filed a motion to dismiss the Complaint.² Complainant responded to the Motion to Dismiss on January 31, 2020.³

Chairman's Information Request No. 1 was issued on January 16, 2020⁴, which the Postal Service responded to on January 23, 2020.⁵ Chairman's Information Request No. 2⁶ was issued February 4, 2020, to which the Postal Service responded on February 18, 2020⁷, after requesting⁸ and receiving⁹ an extension of time to respond. Complainant replied to the Response to CHIR No. 2 on February 24, 2020.¹⁰

On March 17, 2020, the Commission concluded that the Complaint raised material issues of fact, and therefore denied the Postal Service's Motion to Dismiss pursuant to 39 U.S.C. § 3662(b) and 39 C.F.R. § 3030.30(a)(1).¹¹ Additionally, the Commission appointed a Presiding Officer to set a procedural schedule and conduct limited discovery for the purpose of determining disputed issues of fact in the case.¹² The Commission stated that the scope of the discovery proceeding would be limited only to fact-finding conducted by the Presiding Officer on specific issues of fact to resolve whether a violation of 39 U.S.C. § 403 occurred, namely:

² United States Postal Service Motion to Dismiss with Prejudice the Complaint of Randall Ehrlich, January 13, 2020 (Motion to Dismiss).

³ Response to Motion to Dismiss, January 31, 2020 (Response).

⁴ Chairman's Information Request No. 1, January 16, 2020 (CHIR No. 1).

⁵ Responses of the United States Postal Service to Questions No 1-2 of Chairman's Information Request No. 1, January 23, 2020 (Response to CHIR No. 1).

⁶ Chairman's Information Request No. 2, February 4, 2020 (CHIR No. 2).

⁷ Response of the United States Postal Service to Questions 1-4 of Chairman's Information Request No. 2, February 18, 2020 (Response to CHIR No. 2).

⁸ United States Postal Service Motion for Extension of Time to File Response to Questions 1-4 of Chairman's Information Request No. 2, February 11, 2020 (Postal Service Motion).

⁹ Order Granting Motion for Extension of Time to File Responses to Chairman's Information Request No. 2, February 12, 2020 (Order No. 5425). Order No. 5425 also granted Complainant additional time to respond to the Postal Service's answers. Order No. 5425 at 2.

¹⁰ Response to USPS's Answers to Chairman Information Request No. 2, with Third Ehrlich Declaration, February 24, 2020 (Reply to CHIR No. 2 Responses).

¹¹ Order Denying Postal Service Motion to Dismiss Complaint and Notice of Limited Formal Proceedings, March 17, 2020, at 7 (Order No. 5455).

¹² Order No. 5455 at 8; see 39 C.F.R. § 3030.21.

1. Whether any dogs remain at Complainant's residence that are aggressive or could be a threat to carrier safety.
2. Whether postal management followed non-discriminatory processes in its continuance of a dog hold on Complainant's residence.
3. Whether the alternate mailbox site proposed by the Complainant was a reasonable compromise between carrier safety and Complainant's security concerns.
4. Whether the Complainant is obligated to comply with a mailbox relocation if there are no aggressive dogs remaining at his residence.
5. Whether a locked mailbox at the mailbox site approved by the Postal Service would alleviate Complainant's security concerns.

Order No. 5455 at 8.

On March 18, 2020, the Presiding Officer issued a ruling scheduling a prehearing teleconference between the parties and established initial case management procedures.¹³ The prehearing teleconference was held as scheduled.¹⁴ The Presiding Officer subsequently propounded the first set of interrogatories to the Complainant and to the Postal Service on April 16, 2020, pursuant to 39 C.F.R. §§ 3001.12(a), 3001.26(a), and 3001.27(a).¹⁵ Since then, the Presiding Officer has issued several other rulings modifying the procedural schedule and setting forth additional case management procedures.¹⁶

¹³ Presiding Officer's Ruling Scheduling Prehearing Teleconference and Establishing Initial Case Management Procedures, March 18, 2020.

¹⁴ Notice of Posting of Recording, April 17, 2020.

¹⁵ Certificate Regarding Discovery, April 16, 2020.

¹⁶ Presiding Officer's Ruling Establishing Procedural Schedule and Additional Case Management Procedures, April 16, 2020; Presiding Officer's Ruling Denying Request for an Indefinite Abeyance and Granting 30-Day Extension of Procedural Deadlines, April 24, 2020; Presiding Officer's Ruling Adjusting Procedural Schedule, May 8, 2020.

II. MOTION TO EXPAND ISSUES

On May 13, 2020, Complainant filed a motion¹⁷ requesting that the Commission expand the issues under consideration to include the following issues related to dog holds under the Seattle District Animal/Insect Policy (Policy):

- [1.] Whether the Policy, in blanketly stating that carriers shall not deliver mail to homes where dogs are kept only behind a screen or storm door, without consideration for the dog's age, sex, size, breed composition, sterilization status, degree of training, assistance animal legal status (protection under state or federal law, such as Americans with Disabilities Act, Fair Housing Act, or Washington Law Against Discrimination), animal control complaint history, adverse designation legal status, ambulatory capability or degree of incapacitation, weight, and other factors, illegally discriminates against postal customers without air conditioning or those who simply wish to enjoy a natural breeze inside their dwelling instead of artificially cooled air, rendering its continued enforcement violative of 39 USC 403(c).
- [2.] Whether the presence or supervision by the customer of the dog while behind the screen or storm door negates the foregoing Policy proscription, rendering its continued enforcement violative of 39 USC 403(c).
- [3.] Whether a gate or secondary barrier behind the screen or storm door negates the foregoing Policy proscription, rendering its continued enforcement violative of 39 USC 403(c).
- [4.] Whether Mr. Ehrlich's carrier, Tonya Voisine, with or without USPS condonation, has engaged in retaliatory, harassing, and destructive behavior, which constitutes unreasonable or undue discrimination against Mr. Ehrlich in the course of delivering and retrieving his mailpieces in violation of 39 USC 403(c).

Motion at 2.

In support of the Motion, Complainant submitted a declaration providing statements in support of his assertion that the Policy unreasonably discriminates against dog owners without air conditioning.¹⁸ He also reiterates his concern that the mail carrier assigned to his route would continue to "tamper with, deface, and destroy" his mail if she is not removed from the route. Third Declaration at 2.

¹⁷ Complainant's Motion to Expand Issues, May 13, 2020 (Motion).

¹⁸ Third Declaration of Randall Ehrlich, May 13, 2020, at 2 (Third Declaration).

The Postal Service responded to the Motion on May 20, 2020.¹⁹ The Postal Service urges that the Commission deny the Motion in its entirety. Opposition at 1. It asserts that expanding the scope of the proceeding beyond the limited issue of potential discrimination against the Complainant in the maintenance of a dog hold is contrary to the intent of Order No. 5455. *Id.* at 6. It also states that expanding the scope of issues under consideration is unnecessary because the Postal Service is taking steps to permanently restore mail delivery to the front porch mailbox at Complainant's residence. *Id.*

III. COMMISSION ANALYSIS

The Commission has previously stated that it lacks the jurisdiction to rule on internal postal personnel issues such as carrier assignments and disciplinary actions.²⁰ The Motion and supporting Third Declaration seek to reintroduce the Complainant's prayer for removal of the mail carrier assigned to his route. Given the precedent on the Commission's lack of jurisdiction, it would be inappropriate to expand the issues considered to include those over which an appropriate remedy could not be granted.

Complainant also seeks to shift the focus of the Complaint away from a dispute between the Postal Service and himself, and introduce a referendum on the Postal Service's policy writ large. The Commission found discrete material issues that it referred to the Presiding Officer for resolution after careful examination of the Complaint and responses. Moreover, the Commission notes that the parties are in the midst of ongoing discovery under the direction and supervision of the Presiding Officer in an attempt to resolve those discrete issues. The extensive procedural history of this matter as well as the discovery already underway suggest that the Commission avoid

¹⁹ United States Postal Service's Opposition to Complainant's Motion to Expand Issues, May 20, 2020 (Opposition).

²⁰ See Docket No. C2015-2, Order Granting Motion to Dismiss, July 15, 2015 (Order No. 2585); Docket No. C2019-1, Order Granting Motion to Dismiss, December 12, 2018, at 11 (Order No. 4924) ("Complainant requests several remedies related to Postal Service personnel—including the removal of a letter carrier from her route as well as initiation of disciplinary actions, including the termination of several employees...[t]hese actions are outside the Commission's authority to grant relief. Labor and personnel decisions are the purview of the Postal Service as the postal operator.").

expanding the scope of the issues under consideration at this juncture. If Complainant's allegations of undue discrimination vis a vis similarly situated dog owners are proven true, then the Commission could grant the relief of ordering restoration of porch delivery to the Complainant's residence without the introduction of the additional allegations. Whether the Complainant does or does not have air conditioning or the structure of his storm door are not necessary elements in obtaining the relief sought in his claim.

Finally, the Postal Service alleges in its Opposition that it is taking steps to restore porch mailbox delivery to Complainant, thereby rendering his Motion moot. The Commission commends the Postal Service for taking steps towards resolving the issue but declines to rule on the mootness claim at this time.

It is ordered:

1. Complainant's Motion to Expand Issues, filed May 13, 2020, is denied.
2. The Secretary shall arrange for publication of this Order in the *Federal Register*.

By the Commission.

Erica A. Barker
Secretary